

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL M PRINE

Claimant

KITCHENS RESTAURANTS LLC

Employer

APPEAL 21A-UI-12199-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21

Claimant: Respondent (2)

Iowa Code § 96.1A(37) – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

On May 5, 2021, Kitchens Restaurants LLC (employer/appellant) filed a timely appeal from the April 29, 2021 (reference 01) unemployment insurance decision that allowed benefits beginning March 14, 2021 based on a finding claimant was able and available for work and working when work was available.

A telephone hearing was held on July 23, 2021. The parties were properly notified of the hearing. Jill Prine (claimant/respondent) participated personally. Employer participated by owner Mike Hutchison. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on or about October 15, 2019. Claimant is still employed by employer. Claimant is employed part-time as a server. Claimant's hours have always depended on business need and her availability for work. Claimant's availability was limited recently due to medical issues. Claimant filed a claim for benefits each week from the benefit week ending March 20, 2021 through the benefit week ending June 5, 2021. Claimant was not working elsewhere during the period in question.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the April 29, 2021 (reference 01) unemployment insurance decision that allowed benefits beginning March 14, 2021 based on a finding claimant was able and available for work and working when work was available is REVERSED.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "*totally unemployed*" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduce workweek

basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The administrative law judge finds claimant is not totally, partially, or temporarily unemployed and does not meet the availability requirements to be eligible for benefits. During the period in question claimant was still employed in the same way as in the contract of hire: part-time as a server and working as business dictated. Any reduction in hours was due to the nature of the position and her limited availability due to medical issues. Benefits must therefore be denied.

DECISION:

The April 29, 2021 (reference 01) unemployment insurance decision that allowed benefits beginning March 14, 2021 based on a finding claimant was able and available for work and working when work was available is REVERSED. Claimant is not eligible for benefits effective March 14, 2021.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 29, 2021
Decision Dated and Mailed

abd/lj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.